

UNITED STATES OF AMERICA : CRIMINAL ACTION  
 :  
 v. :  
 :  
 DOMINIC MOTT : NO. 93-325-4

The petitioner brings this petition pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. The petitioner states two grounds for his motion: 1) his conviction was obtained by a coerced guilty plea; and 2) his trial counsel was ineffective for failing to secure for Movant a sentence more lenient than that imposed on a co-defendant. Magistrate Judge Wells discussed these grounds at length in her Report and Recommendation. This Court adopts Magistrate Judge Wells' Report and Recommendation with respect to the petitioner's ineffective assistance of counsel claim, and the Court need not separately

address that issue. However, because this Court will not adopt the Report and Recommendation with respect to the coerced guilty plea claim, the Court will now discuss that component of the petition.

## **II. DISCUSSION**

The petitioner seeks relief under the federal habeas corpus provision which provides in relevant part that:

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

28 U.S.C. § 2255 (1996). In considering a petition for habeas relief under Section 2255, "the appropriate inquiry is whether the claimed error of law was a fundamental defect which inherently resulted in a complete miscarriage of justice, and whether it presents exceptional circumstances where a need for the remedy afforded by the writ of habeas corpus is apparent." Casper v. Ryan, 822 F.2d 1283 (3d Cir. 1987), cert. denied, 484 U.S. 1012 (1988); accord United States v. Diggs, 1993 WL 140740 (E.D. Pa. May 4, 1993).

A petition under § 2255 "is not a substitute for appeal, nor may it be used to re-litigate matters decided adversely on appeal." Wright v. United States, No. CIV.A.95-5733, 1996 WL 224672, at \*1 (E.D. Pa. April 29, 1996). Further, a district court may summarily dismiss a motion brought under § 2255 without a hearing where the "motion, files, and records, 'show conclusively that the movant is not entitled to relief.'" United States v. Nahodil, 36 F.3d 323, 326 (3d Cir. 1994) (quoting United States v. Day, 969 F.2d 39, 41-42 (3d Cir. 1992); Virgin Islands v. Forte, 865 F.2d 59, 62 (3d Cir. 1989)).

The petitioner filed a signed plea agreement on December 20, 1993, in which he agreed to plead guilty to certain counts of the indictment. At the petitioner's change of plea hearing held that day, the following exchanges took place:

THE COURT: When you signed this agreement, did anyone make any promises to you that if you went along with this, that the Court would be more lenient on you at the time of sentencing?

THE DEFENDANT: No, sir.

THE COURT: Did anyone suggest to you that you shouldn't exercise your right to a trial by a jury because the Government will really come down on you if you make them work and prove your guilt?

THE DEFENDANT: No, sir.

THE COURT: Did anyone threaten you, coerce you to go along with this agreement?

THE DEFENDANT: No, sir.

Change of Plea Hearing, 12/20/93 at 15-16. Now, the petitioner seeks to withdraw his guilty plea.

In his petition, the petitioner states that:

Movant, at the time of arrest, being in a confused state of mind[,] was advised by law enforcement officers that if [Movant] didn't plead guilty, Movant's wife would be arrested and charged. Even though Movant was cognizant of wife's non[-]involvement in illegality, the weight of officers['] words weighed heavily on Movant[']s decision to plead guilty. Movant[']s thoughts were solely on wife and children and not on issue of own arrest.

Pet. at 5. For this reason, the petitioner contends that his guilty plea was tainted and involuntary.

"The acceptance of a plea conditioned on lenient treatment for another is troublesome business." United States v. Laura, 667 F.2d 365, 379 (3d Cir. 1981) (Stern, J., dissenting). In fact, the Supreme Court of the United States has commented that such a bargain, "might pose a greater danger of inducing a false guilty plea by skewing the assessment of the risks a defendant must consider." Bordenkircher v. Hayes, 434 U.S. 357, 364 n. 8 (1978). Moreover, where the threatened prosecution pertains to those with whom the defendant has familial ties or other close bonds, the threat of coercion is much greater. United States v. Carr, 80 F.3d 413, 417 (10th Cir. 1996). Therefore, "'special care must be taken to ascertain the voluntariness of' guilty pleas entered into in such

circumstances." United States v. Nuckols, 606 F.2d 566, 569 (5th Cir. 1979) (quoting United States v. Tursi, 576 F.2d 396, 398 (1st Cir. 1978)).

Neither the United States Supreme Court nor the United States Court of Appeals for the Third Circuit, however, has forbidden the acceptance of such a plea. Most courts have found that prosecutors may practice this type of bargaining if they "use a high standard of good faith." Nuckols, 606 F.2d at 569. This high standard of good faith is met if the threatened prosecution of the third persons is justified. Id. at 570. Moreover, if this standard is met, those courts have "insisted that an accused's choice be respected, and if he 'elects to sacrifice himself for such motives, that is his choice.'" Carr, 80 F.3d at 417 (quoting Mosier v. Murphy, 790 F.2d 62, 66 (10th Cir. 1986)).

Courts have held that "a defendant's affirmation to the sentencing court that he entered the guilty plea voluntarily is 'not an absolute bar to his subsequent claims that he pleaded guilty only to protect [a] third party.'" United States v. Whalen, 976 F.2d 1346, 1348 (10th Cir. 1992) (quoting Martin v. Kemp, 760 F.2d 1244, 1248 (11th Cir. 1985)). Still, where the defendant makes an affirmation to the sentencing court that he entered the guilty plea voluntarily, that defendant "carries a heavy burden 'to establish that the government did not observe a

high standard of good faith based upon probable cause to believe that the third party had committed a crime.'" Whalen, 976 F.2d at 1348 (quoting Martin, 760 F.2d at 1248; Nuckols, 606 F.2d at 569).

In the instant case, the petitioner merely asserts that the threat made at the time of his arrest was so great that it made his guilty plea, entered into over five months later, involuntary.<sup>1</sup> However, the petitioner does not contend that the law enforcement officers lacked probable cause to arrest his wife. Nor does the petitioner argue that the prosecution failed to act in good faith through any other improper conduct. Thus, the petitioner fails "to establish that the government did not observe a high standard of good faith based upon probable cause to believe that the third party had committed a crime.'" Whalen, 976 F.2d at 1348 (quoting Martin, 760 F.2d at 1248; Nuckols, 606 F.2d at 569). Accordingly, the petitioner's allegations, even taken as true, fail to "show conclusively that the movant is . . . entitled to relief.'" Nahodil, 36 F.3d at 326 (quoting Day, 969 F.2d at 41-42; Forte, 865 F.2d at 62).

Moreover, the petitioner's assertion that the threat "weighed heavily on [his] decision to plead guilty" on December 20, 1993, is not credible. Pet. at 5. According to the petitioner, the threat to arrest and to charge his wife was made

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1. The petitioner was arrested on July 13, 1993. The guilty plea was entered on December 20, 1993.

by law enforcement officials on July 13, 1993. Id. The petitioner does not contend that the threat was ever repeated by law enforcement officials or by anyone from the United States Attorney's Office. Nor does the petitioner allege that the threat was viable at the time of his guilty plea. Accordingly, the petitioner has failed to explain how the threat impacted his decision to plead guilty.

This Court recognizes that the petitioner previously denied being coerced or threatened to plead guilty. Change of Plea Hearing, Tr. at 17 (December 20, 1993). "A habeas petitioner faces a heavy burden in challenging the voluntary nature of his guilty plea, for the plea hearing is specifically designed to uncover hidden promises or representations as to the consequences of a guilty plea." Lesko v. Lehman, 925 F.2d 1527, 1537 (3d Cir.), cert. denied, 502 U.S. 898 (1991). This Court finds that the petitioner fails to meet this heavy burden. Thus, the petitioner's argument fails and the guilty plea must be upheld.

### **III. CONCLUSION**

This case is one where the motion, files, and record conclusively show that the movant is not entitled to relief. Accordingly, petitioner's motion is dismissed without a hearing.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
DOMINIC MOTT	:	NO. 93-325-4

O R D E R

AND NOW, this 22nd day of April, 1998, upon careful and independent consideration of the Motion of Petitioner, Dominic Mott, to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255, and after review of the Report and Recommendation of United States Magistrate Judge Carol Sandra Moore Wells, IT IS HEREBY ORDERED that:

1. The Report and Recommendation is **APPROVED and ADOPTED** with respect to the petitioner's ineffective assistance of counsel claim; and

2. Motion of Petitioner to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255 is **DENIED and DISMISSED**.

BY THE COURT:

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HERBERT J. HUTTON, J.